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10 OXNARD POLICE DEPARTMENT, JOHN CROMBACH,
11 and ANDREW SALINAS

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 MARIA LAZOS, et al.,) No. CV 08-02987 RGK (SHx)
15)
16 Plaintiffs,) [consolidated w/
17) No. CV 08-05153 RGK (SH)]
18 v.)
19) **DEFENDANTS' OPPOSITION TO**
20 CITY OF OXNARD, et al.,) **PLAINTIFFS' MOTION IN**
21) **LIMINE NO. 9; DECLARATION**
22 Defendants.) **OF DEFENSE COUNSEL**
23)
24) Date : August 11, 2009
25) Time : 9:00 a.m.
26 AND CONSOLIDATED ACTION.) Ctrm : 850 Roybal
27)
28)

29 Defendants hereby oppose plaintiffs' Motion in Limine No. 9
30 regarding exclusion of any and all forensic evidence.

31 **I.**

32 **PLAINTIFFS FAILED TO TIMELY MEET AND CONFER AS**
33 **REQUIRED BY LOCAL RULE 7-3**

34 Plaintiffs failed to timely meet and confer. Pursuant to
35 Local Rule 7-3, counsel contemplating the filing of any motion
36 shall first contact opposing counsel to discuss thoroughly the
37 substance of the contemplated motion at least twenty (20) days
38 prior to the filing of the motion. Pursuant to the Court's

1 standing orders, motions in limine are to be filed and served a
2 minimum of forty-five (45) days prior to the scheduled trial date
3 of August 11, 2009, which is June 27, 2009. Since June 27 is a
4 Saturday, the motion is to be filed by June 26. Based upon a
5 June 26 filing date, any meet and confer effort would have to be
6 completed by June 6, 2009 (twenty days prior). Plaintiffs did not
7 attempt to meet and confer by identifying the anticipated motions
8 in limine until June 11, 2009 (Exhibit A). The Court should note
9 that plaintiffs' motion fails to include the requisite language of
10 L.R. 7-3, advising the Court of the date of the meet and confer,
11 obviously because it was untimely. As such, because the motion is
12 untimely, it should not be considered by the Court.

13 **II.**

14 **NO EVIDENCE OF BAD FAITH TO WARRANT SANCTIONS**

15 Plaintiffs improperly contend that evidence was consumed and/
16 or destroyed in bad faith and that any evidence pertaining to the
17 forensic studies should be excluded.

18 Defendants utilize an outside agency, the Ventura County
19 Sheriff's Department, to perform forensic studies. The evidence
20 that was the subject of DNA analysis was delivered to the Ventura
21 County Sheriff's Department for testing on October 12, 2007, nine
22 days after the incident. (See Exhibit 5 to plaintiffs' motion,
23 bottom left corner, indicating date Ventura County Sheriff's
24 Department took possession of evidence.) Plaintiffs' correspon-
25 dence was not sent until long after the evidence was sent away for
26 testing. Plaintiffs have provided no evidence of when the actual
27 testing was performed or when the samples were consumed. All that
28 plaintiffs reference are the dates the reports were prepared.

1 There is no evidence of bad faith on the part of defendants
2 which would warrant any sanctions. Plaintiffs have not shown any
3 bad faith in sending the evidence to the Ventura County Sheriff's
4 Department for testing. Nothing in the record indicates that the
5 Ventura County Sheriff's Department's Forensic Science Laboratory's
6 consumption of the samples was done with the intent of covering up
7 information or at the instruction of defendants.

8 **III.**

9 **PLAINTIFFS' MOTION IS TOO VAGUE AND OVERBROAD**

10 Plaintiffs' motion in limine to exclude any and/or all
11 forensic evidence is too vague and overbroad. Plaintiffs' motion
12 lists ten items plus "all other evidence." Plaintiffs claim that
13 they were denied an opportunity to examine and test the evidence;
14 however, they never made a request to do so. Plaintiffs' motion is
15 merely an effort to exclude relevant evidence which they never
16 truly made an effort to examine. Their motion does not set forth
17 what evidence is pertinent to this case, what specific results
18 linked decedent to the scene, or what they seek to exclude. The
19 motion is a shotgun approach to excluding evidence. As such, the
20 defense will go through item by item for the Court and show that
21 the evidence could have been examined by plaintiffs' experts, had
22 they truly desired.

23 Topics 1 and 2 in plaintiffs' motion are the fixed-blade knife
24 and the folding knife. The evidence demonstrated that the folding
25 knife found in the vehicle the decedent was believed to have been
26 burglarizing and the fixed-blade knife found at the scene of the
27 shooting contained decedent's DNA. The knives are still in
28 evidence; they have not been destroyed and could have been

1 re-swabbed, then tested by plaintiffs' experts had they made a
2 request, which they did not. The folding knife had a trace of
3 blood on the blade, of which a portion was swabbed. (See Exhibit 2
4 of plaintiffs' motion, page 1 of 4, Item 6A.) Had plaintiffs
5 desired, they could have tested the remaining portion.

6 Topic 3 is the DNA samples from the truck. Ten items associ-
7 ated with this topic were sent to the forensic lab. (See Exhibit
8 2 of plaintiffs' motion, pages 1 of 4 and 2 of 4, items 9 - 9J.)
9 Many of these items were not even examined, as indicated in the
10 report. For two of the items, although the swabs were consumed,
11 according to the report, the extracted DNA obtained from the swabs
12 still exists and could have been tested had plaintiffs desired.
13 Only two items tested contained DNA, and the testing revealed that
14 the decedent was not a contributor. Why plaintiffs address this
15 item in their motion is unclear, except it demonstrates their
16 shotgun approach to the motion in limine to exclude all evidence
17 that is potentially harmful to their case.

18 Topics 4 and 5 are a piece of metal (possible tip of knife)
19 and one metal part (possible knife blade). (See Exhibit 2 of
20 plaintiffs' motion, page 2 of 4, items 10, 11, and 11A.) Item 10
21 was not analyzed for DNA, and the swab of Item 11 was not tested
22 because of insufficient DNA. Once again one must ask, why did
23 plaintiffs address this issue in the motion?

24 Topic 6 is the syringe found in decedent's pocket. The item
25 was not sent to the Ventura County Sheriff's Department's Forensic
26 Science Laboratory, let alone had DNA testing performed upon it.

27 Topic 7 is a swab from the chisel. (See Exhibit 2 of plain-
28 tiffs' motion, page 2 of 4, Item 14.) The evidence demonstrated

1 that the chisel found in the vehicle the decedent was believed to
2 have been burglarizing contained decedent's DNA. The chisel is
3 still in evidence, it has not been destroyed, and it could have
4 been re-swabbed, then tested by plaintiffs' experts, had they made
5 a request, which they did not. Although the swab was consumed,
6 according to the report, the extracted DNA obtained from the swab
7 still exists and could have been tested, had plaintiffs desired.

8 Topic 8 is a swab from a possible knife blade and a swab from
9 miscellaneous metal parts. (See Exhibit 2 of plaintiffs' motion,
10 page 2 of 4, items 13 and 15.) As clearly stated in the report,
11 these items were not tested because of insufficient DNA.

12 Topics 9 and 10 are the Pittsburgh Multi Allen Wrench. (See
13 Exhibits 3 and 4 of plaintiffs' motion, page 1 of 4 and page 1 of
14 3, Item 5 in both reports.) As for the DNA testing, had plaintiffs
15 actually retained an expert, they would have learned that the test
16 was hardly conclusive that decedent was a major contributor on this
17 item. As for the fiber analysis, there is absolutely no evidence
18 that the fibers were destroyed and unavailable for analysis.

19 For the foregoing reasons, it is respectfully requested that
20 the Court deny plaintiffs' Motion in Limine No. 9.

21
22 Dated: July ____, 2009

23 LAW OFFICES OF ALAN E. WISOTSKY

24
25 By: _____
26 DIRK DeGENNA
27 Attorneys for Defendants,
28 CITY OF OXNARD, OXNARD POLICE
DEPARTMENT, JOHN CROMBACH, and
ANDREW SALINAS

DECLARATION OF DIRK DEGENNA

I, Dirk DeGenna, declare as follows:

1. I am an attorney admitted to practice law before all the courts of the State of California and the United States District Court, Central District of California, and am an associate in the Law Offices of Alan E. Wisotsky, attorneys of record for defendants in this action. I make this declaration of my own personal knowledge, except as to the information declared on information and belief, and if called upon to testify, I could and would do so competently.

2. Plaintiffs' counsel did not make an effort to meet and confer regarding potential motions in limine until June 11, 2009, when by way of correspondence dated that same day, plaintiffs' counsel identified 23 anticipated motions in limine.

3. Attached hereto as Exhibit A is a true and correct copy of the June 11, 2009, correspondence.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July ____, 2009, at Oxnard, California.

DIRK DEGENNA